

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Resolution ALJ 176-3130  
Administrative Law Judge Division  
March 16, 2004

**R E S O L U T I O N**

RESOLUTION ALJ 176-3130. Ratification of preliminary determinations of category for proceedings initiated by application. The preliminary determinations are pursuant to Article 2.5, Rules 4, and 6.1 of the Commission's Rules of Practice and Procedure. (See also Rule 63.2(c) regarding notice of assignment.)

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The Commission's rules and procedures which implement the requirements of Senate Bill (SB) 960 (Leonard, ch. 96-0856) are, for the most part, found in Article 2.5 of our Rules of Practice and Procedure. The rules and procedures were adopted by the Commission in D.97-11-021, which describes more fully the background to the development of these rules. Rule 4 describes the formal proceedings to which the SB 960 rules (Article 2.5) apply. Rule 6.1 requires the Commission to preliminarily determine a proceeding's category, whether the proceeding requires a hearing, and designate an Assigned Commissioner and Administrative Law Judge. Rule 6.1(a) states that the preliminary determination of category is not appealable but shall be confirmed or changed by Assigned Commissioner's ruling. Unless and until a preliminary determination is changed by such ruling, the preliminary determination of category governs the applicability of the other reforms that SB 960 requires. Rule 63.2 provides for petitioning the Commission to reassign a proceeding to another administrative law judge. Rule 63.2(c) establishes the time for filing such a petition. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

**The Categories**

SB 960 makes sweeping changes in many aspects of the Commission's practices in an effort to improve the quality and timeliness of Commission decision making. It creates three categories of proceedings: adjudicatory, ratesetting, and quasi-legislative. The

applicability of many of the changes it requires depends upon the category assigned to the proceeding. For example, the ex parte rules which apply differ if the proceeding is categorized as adjudicatory rather than quasi-legislative. The Legislature defined each of these procedural categories in Section 7 of SB 960. Consistent with these definitions, the rules provide that:

“‘Adjudicatory’ proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

“‘Ratesetting’ proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). ‘Ratesetting’ proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purposes of this Article, other proceedings may be categorized as ratesetting as described in Rule 6.1(c).

“‘Quasi-legislative’ proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.” (Rules 5(b), 5(c), and 5(d).)

### **Mixed or Unclear Category Proceedings**

For a proceeding that may fall into more than one category, the rules allow parties to recommend that the Commission pick the most suitable category, or to recommend dividing the subject matter of the proceeding into different phases or one or more new proceedings, each with its own category. The rules provide that a proceeding that does not clearly fit into *any* of SB 960’s defined categories will be conducted under the rules applicable to the ratesetting category. As such a proceeding matures, the Commission may determine that the rules applicable to one of the other categories, or some hybrid of those rules, would be better suited to the proceeding.

As stated in D.97-06-071, ratesetting proceedings typically involve a mix of policymaking and factfinding relating to a particular public utility. Because proceedings that do not clearly fall within the adjudicatory or quasi-legislative categories likewise typically involve a mix of policymaking and factfinding, the ratesetting procedures are, in general, preferable for those proceedings.

### **Next Steps**

As stated above, this preliminary determination of category is not appealable. Once interested parties have had an opportunity to respond to the initiating party's proposed category, the preliminary determination shall be confirmed or changed by Assigned Commissioner's Ruling pursuant to Rule 6(a)(3). This Assigned Commissioner Ruling may be appealed to the full Commission pursuant to Rule 6.4(a). Parties have 10 days after the ruling is mailed to appeal. Responses to the appeal are allowed under Rule 6.4(b), and must be filed and served not later than 15 days after the ruling is mailed. The full Commission will consider the appeal.

Any party, or person or entity declaring an intention to become a party is entitled to petition for reassignment of the proceeding to another Administrative Law Judge, as described in Rule 63.2. Such a petition must be filed no later than 10 days after notice of the assignment. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

### **Conclusion**

The Commission has reviewed the initial pleading of the utility applicants listed in the attached schedule and has made a preliminary determination of category and need for hearing, consistent with the requirements and definitions of Article 2.5 of its rules.

**IT IS ORDERED** that each proceeding listed in the attached schedule is preliminarily categorized, and the need for a hearing is noted.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on March 16, 2004, the following Commissioners voting favorably thereon:

/s/ WILLIAM AHERN

WILLIAM AHERN  
Executive Director

MICHAEL R. PEEVEY  
President

CARL W. WOOD  
LORETTA M. LYNCH  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners

## PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3130 (3/16/04)

<b>NUMBER TITLE</b>	<b>PROPOSED CATEGORY</b>	<b>PRELIM. CATEGORY</b>	<b>HEARING</b>
<b>A04-02-016</b> STANLEY, CHARLES, dba MORONGO BASIN AIRPORT TRANSPORT, for a Certificate of Public Convenience and Necessity, to operate as a Passenger Stage Corporation between points in the Counties of Los Angeles, San Bernardino and Riverside, including the Twenty Nine Palms Marine Corp Base, the City of Twenty Nine Palms, the Twenty Nine Palms Airport, points in Joshua Tree, Yucca Valley, Morongo Valley and Desert Hot Springs, and the San Bernardino Greyhound Station, on the one hand, and points in Southern California, including the Los Angeles International Airport and the Ontario International Airport, the Los Angeles Union Station/Amtrak, and the Los Angeles Greyhound Station, on the other hand, pursuant to provisions of Section 1031 et seq., of the Public Utilities Code.	Ratesetting	Ratesetting	NO
<b>A04-02-017</b> PACIFIC GAS AND ELECTRIC COMPANY, (U 39-M), addressing the status of remaining insurance claims related to the Gerber Compressor Station fire pursuant to Decision 03-12-061.	Ratesetting	Ratesetting	NO
<b>A04-02-025</b> CALIFORNIA WINE TOURS, INC., dba EVANS AIRPORT SERVICE, for approval of the extension of Passenger Stage Corporation Certificate 9679 to include the Oakland International Airport and the Town of Sonoma.	Ratesetting	Ratesetting	NO
<b>A04-02-026</b> SOUTHERN CALIFORNIA EDISON COMPANY, for authorization to replace San Onofre Nuclear Generating Station Unit Nos. 2 & 3 (SONGS 2 & 3) steam generators; establish ratemaking for cost recovery; and address other related steam generator replacement issues.	Ratesetting	Ratesetting	YES
<b>A04-02-027</b> JAY GARDNER, PAM SIMONSON, MATT & JUELL FULLNER, KENNETH VAN GORDER, dba MEYERS WATER COMPANY, for approval of the transfer by sale of the Meyers Water Company and all related assets from Seller, Kenneth Van Gorder to Buyers, Jay Gardner and Pam Simonson and Matt & Juell Fullner,	Ratesetting	Ratesetting	NO
<b>A04-02-028</b> SOUTHERN CALIFORNIA EDISON COMPANY, Petition for Modification of Resolution E-3843 dated December 4, 2004.	Ratesetting	Ratesetting	NO

## PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3130 (3/16/04)

<b>NUMBER TITLE</b>	<b>PROPOSED CATEGORY</b>	<b>PRELIM. CATEGORY</b>	<b>HEARING</b>
<b>A04-02-029</b> HORIZON TELECOM NETWORK LLC, for registration as an interexchange carrier telephone corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
<b>A04-02-030</b> 2677588 WASHINGTON LLC, PACIFICORP, for an order approving the sale of PacifiCorp's interest in the Skookumchuck Dam, Hydroelectric Facilities and related assets to 2677588 Washington LLC, and for an EWG determination.	Ratesetting	Ratesetting	NO
<b>A04-02-031</b> CITY OF GRIDLEY, for authorization to remove the Laurel Street Crossing of the Union Pacific Railroad Company tracks and to construct a new crossing in the City of Gridley, County of Butte, State of California.	Ratesetting	Ratesetting	NO
<b>A04-03-003</b> SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, SOBRATO INTERESTS III, A CALIFORNIA LIMITED PARTNERSHIP, for an order authorizing conversion of an existing private at-grade freight railroad crossing to a public crossing and approving enhanced safety appliances and procedures at the crossing, adjacent to Winchester Boulevard near State Route 85 located in the town of Los Gatos, County of Santa Clara.	Ratesetting	Ratesetting	NO
<b>A04-03-004</b> CHARTER FIBERLINK CA - CCO, LLC, for a Certificate of Public Convenience and Necessity to provide Resold and Limited Facilities-Based Local Exchange Telecommunications Services within California.	Ratesetting	Ratesetting	NO
<b>A04-03-005</b> CHARTER FIBERLINK CA - CCO, LLC, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
<b>A04-03-006</b> CHARTER FIBERLINK CA-CCVII, LLC, for a Certificate of Public Convenience and Necessity to provide Resold and Limited Facilities-Based Local Exchange Telecommunications Services within California.	Ratesetting	Ratesetting	NO

## PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3130 (3/16/04)

<b>NUMBER TITLE</b>	<b>PROPOSED CATEGORY</b>	<b>PRELIM. CATEGORY</b>	<b>HEARING</b>
<b>A04-03-007</b> CHARTER FIBERLINK CA-CCVII, LLC, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
<b>A04-03-008</b> SAN DIEGO GAS & ELECTRIC COMPANY, (U 902-E) for a Certificate of Public Convenience and Necessity for the Otay Mesa Power Purchase Agreement Transmission Project.	Ratesetting	Ratesetting	YES
<b>A04-03-009</b> RB COMMUNICATIONS, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
<b>A04-03-010</b> CITY OF SACRAMENTO, for authorization to construct a bridge-overhead separation structure over the tracks of the Union Pacific Railroad Company in the City and County of Sacramento, State of California.	Ratesetting	Ratesetting	NO
<b>A04-03-011</b> ECLIPSE COMMUNICATIONS INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
<b>A04-03-012</b> FERNANDEZ, STEPHEN, dba RAMONA WATER CO., to sell and Louis DeMartino to buy the water system in Riverside County.	Ratesetting	Ratesetting	NO
<b>A04-03-013</b> AT&T COMMUNICATIONS OF CALIFORNIA, INC., WORLDCOM, INC. (MCI), for the Commission to reexamine shared and common costs and non-dedicated transport in its annual review of unbundled network element costs pursuant to ordering paragraph 11 of D99-11-050.	Ratesetting	Ratesetting	NO